

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

ePLUS, INC.,)	
)	
Plaintiff,)	Civil Action No. 3:09cv620(REP)
)	
v.)	
)	
LAWSON SOFTWARE, INC.,)	
)	
Defendant.)	

**PLAINTIFF ePLUS, INC.’S MOTION IN LIMINE NO. 1: TO EXCLUDE FROM TRIAL
ANY EVIDENCE, EXPERT OPINION, OTHER TESTIMONY, OR ARGUMENT
RELATING TO REEXAMINATION OF THE PATENTS-IN-SUIT**

Pursuant to Fed. R. Evid. 402 and 403, Plaintiff ePlus, Inc. (“ePlus”) respectfully moves *in limine* and requests that the Court exclude any evidence, testimony (including expert opinion), or argument relating to reexamination of the patents-in-suit by the U.S. Patent and Trademark Office (“PTO”). Such evidence has no probative value in the case and would serve only to confuse the jury — to the prejudice of ePlus — with respect to the meaning of the asserted claims and their validity. As set forth in detail in the accompanying brief, a PTO reexamination employs different claim construction principles, different burdens of proof, and different evidentiary procedures than does a federal court patent litigation. Moreover, interim rulings made at the preliminary stages of such proceedings have no probative value with respect to the validity of the patents-in-suit. For these and other reasons, the Federal Circuit recently upheld a district court’s decision to exclude such evidence, stating, “*non-final re-examination determinations [are] of little relevance to the jury’s independent deliberations on the factual issues underlying the question of obviousness. In contrast, the risk of jury confusion if*

evidence of the non-final PTO proceedings [is] introduced [is] high.” Callaway Golf Co. v. Acushnet Co., 576 F.3d 1331, 1343 (Fed. Cir. 2009) (emphasis added).

ePlus therefore respectfully requests that the Court exclude such evidence, expert opinion, other testimony, or argument from the trial of this action. A proposed order is attached hereto.

June 18, 2010

Respectfully submitted,

/s/

Henry I. Willett, III (VSB #44655)
Craig T. Merritt (VSB #20281)
Counsel for Plaintiff ePlus, Inc.
CHRISTIAN & BARTON, LLP
909 East Main Street, Suite 1200
Richmond, Virginia 23219-3095
Telephone: (804) 697-4100
Facsimile: (804) 697-4112
hwillett@cblaw.com

Scott L. Robertson (*admitted pro hac vice*)
Jennifer A. Albert (*admitted pro hac vice*)
David M. Young (VSB #35997)
GOODWIN PROCTER LLP
901 New York Avenue, N.W.
Washington, DC 20001
Telephone: (202) 346-4000
Facsimile: (202) 346-4444
srobertson@goodwinprocter.com
jalbert@goodwinprocter.com
dyoung@goodwinprocter.com

Michael G. Strapp (*admitted pro hac vice*)
James D. Clements (*admitted pro hac vice*)
GOODWIN PROCTER LLP
Exchange Place
53 State Street
Boston, MA 02109-2881
Telephone: (617) 570-1000
Facsimile: (617) 523-1231
mstrapp@goodwinprocter.com
jclements@goodwinprocter.com

Attorneys for Plaintiff, ePlus inc.

CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of June, 2010, I will electronically file the foregoing

**PLAINTIFF ePLUS, INC.'S MOTION IN LIMINE NO. 1: TO EXCLUDE FROM TRIAL
ANY EVIDENCE, EXPERT OPINION, OTHER TESTIMONY, OR ARGUMENT
RELATING TO REEXAMINATION OF THE PATENTS-IN-SUIT**

with the Clerk of Court using the CM/ECF system which will then send a notification of such filing (NEF) via email to the following:

Daniel McDonald, *pro hac vice*
William D. Schultz, *pro hac vice*
Rachel C. Hughey, *pro hac vice*
Joshua P. Graham, *pro hac vice*
Andrew Lagatta, *pro hac vice*

MERCHANT & GOULD

3200 IDS Center

80 South Eighth Street

Minneapolis, MN 55402

Telephone: (612) 332-5300

Facsimile: 612) 332-9081

lawsonservice@merchantgould.com

Counsel for Defendant Lawson Software, Inc.

Robert A. Angle, VSB#37691
Dabney J. Carr, IV, VSB #28679

TROUTMAN SANDERS LLP

P.O. Box 1122

Richmond, Virginia 23218-1122

(804) 697-1238

(804) 698-5119 (Fax)

robert.angle@troutmansanders.com

dabney.carr@troutmansanders.com

Counsel for Defendant Lawson Software, Inc.

/s/

Henry I. Willett, III (VSB #44655)

Counsel for Plaintiff ePlus, Inc.

CHRISTIAN & BARTON, LLP

909 East Main Street, Suite 1200

Richmond, Virginia 23219-3095

Telephone: (804) 697-4100

Facsimile: (804) 697-4112

hwillett@cblaw.com